

OCCUPATIONAL CODE (EXCERPT)
Act 299 of 1980

339.101 Short title.

Sec. 101. This act shall be known and may be cited as the “occupational code”.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at § 338.3501 of the Michigan Compiled Laws.

For transfer of rule-making authority of occupational and health occupation boards and related task forces from the department of commerce to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at § 445.2001 of the Michigan Compiled Laws.

Popular name: Act 299

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339.102 Meanings of words.

Sec. 102. For purposes of this act, the words defined in sections 103 to 105 have the meanings ascribed to them in those sections.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

Popular name: Act 299

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339.103 Definitions; B, C.

Sec. 103. (1) “Board” means, in each article which deals with a specific occupation, the agency created in that article composed principally of members of the regulated occupation. In all other contexts, board means each agency created under this act.

(2) “Censure” means an expression of disapproval of a licensee's or registrant's professional conduct, which conduct is not necessarily a violation of this act or a rule promulgated or an order issued under this act.

(3) “Competence” means a degree of expertise which enables a person to engage in an occupation at a level which meets or exceeds minimal standards of acceptable practice for the occupation.

(4) “Complaint” means an oral or written grievance.

(5) “Controlled substance” means a drug, substance, or immediate precursor as set forth in section 7212, 7214, 7216, 7218, or 7220 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7212, 333.7214, 333.7216, 333.7218, and 333.7220 of the Michigan Compiled Laws, not excluded pursuant to section 7227 of Act No. 368 of the Public Acts of 1978, being section 333.7227 of the Michigan Compiled Laws.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1994, Act 257, Imd. Eff. July 5, 1994.

Popular name: Act 299

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339.104 Definitions; D to K.

Sec. 104. (1) “Department” means the department of commerce.

(2) “Director” means the director of the department of commerce or an authorized representative of the director of the department of commerce.

(3) “Disability” means an infirmity that prevents a board member from performing a duty assigned to the board member.

(4) “Files” means the records, memoranda, opinions, minutes, and similar written materials that were formerly in the physical dominion of a board abolished by this act and the records, memoranda, opinions, minutes, and similar written materials of a board created under this act.

(5) “Formal complaint” means a document that states the charges of each alleged violation and is prepared by the department or the department of attorney general after a complaint has been received by the department.

(6) “General public” means each individual residing in this state who is 18 years of age or older, other than a person or the spouse of a person who is licensed or registered in the occupation or who has a material financial interest in the occupation being regulated by the specific article in which the term is used.

(7) "Good moral character" means good moral character as defined in section 1 of Act No. 381 of the Public Acts of 1974, being section 338.41 of the Michigan Compiled Laws.

(8) "Incompetence" means a departure from, or a failure to conform to, minimal standards of acceptable practice for the occupation.

(9) "Knowledge and skill" means the information, education, practical experience, and the facility in applying that information, education, and practical experience.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1996, Act 151, Imd. Eff. Mar. 25, 1996.

Popular name: Act 299

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339.105 Definitions; L to S.

Sec. 105. (1) "License" means the document issued to a person under this act which will enable that person to use a designated title and practice an occupation, which practice would otherwise be prohibited by this act. License includes a document issued by the department which permits a school, institution, or person to offer training or education in an occupation or which permits the operation of a facility, establishment, or institution in which an occupation is practiced. License includes a permit or approval.

(2) "Licensee" means a person who has been issued a license under this act.

(3) "Limitation" means a condition, stricture, constraint, restriction, or probation attached to a license or registration relative to the scope of practice including the following:

(a) A requirement that the licensee or registrant perform only specified functions of the licensee's or registrant's occupation.

(b) A requirement that the licensee or registrant perform the licensee's or registrant's occupation only for a specified period of time.

(c) A requirement that the licensee or registrant perform the licensee's or registrant's occupation only within a specified geographical area.

(d) A requirement that restitution be made or certain work be performed before a license or registration is issued, renewed, or reinstated.

(e) A requirement that a financial statement certified by a person licensed as a certified public accountant be filed with the department at regular intervals.

(f) A requirement which reasonably assures a licensee's or registrant's competence to perform the licensee's or registrant's occupation.

(g) A requirement that all contracts of a licensee or registrant be reviewed by an attorney.

(h) A requirement that a licensee or registrant have on file with the department a bond issued by a surety insurer approved by the department or cash in an amount determined by the department.

(i) A requirement that a licensee or registrant deposit money received in an escrow account which can be disbursed only under certain conditions as determined by the licensee or registrant and another party.

(j) A requirement that a licensee or registrant file reports with the department at intervals determined by the department.

(4) "Occupation" means a field of endeavor regulated by this act.

(5) "Person" means an individual, sole proprietorship, partnership, association, corporation, common law trust, or a combination of those legal entities. Person includes a department, board, school, institution, establishment, or governmental entity.

(6) "Physical dominion" means control and possession.

(7) "Physician" means that term as defined in section 17001 and section 17501 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.17001 and 333.17501 of the Michigan Compiled Laws.

(8) "Probation" means a sanction which permits a board to evaluate over a period of time a licensee's or registrant's fitness to practice an occupation regulated by this act.

(9) "Public access" means the right of a person to view and copy files pursuant to the freedom of information act, Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(10) "Registrant" means a person who is registered under this act.

(11) "Registration" means the document issued to a person under this act which will enable that person to use a designated title, which use would be otherwise prohibited by this act.

(12) "Rule" means a rule promulgated under this act and pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(13) "State" means the District of Columbia or a commonwealth, state, or territory of the United States.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1988, Act 463, Eff. Sept. 1, 1989.

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OCCUPATIONAL CODE (EXCERPT) **Act 299 of 1980**

339.601 Practicing regulated occupation or using designated title without license or registration; operation of barber college, school of cosmetology, or real estate school without license or approval; violation as misdemeanor; penalties; injunctive relief; exceptions; "affected person" defined; investigation; remedies; performance of services by interior designer.

Sec. 601. (1) A person shall not engage in or attempt to engage in the practice of an occupation regulated under this act or use a title designated in this act unless the person possesses a license or registration issued by the department for the occupation.

(2) A school, institution, or person shall not operate or attempt to operate a barber college, school of cosmetology, or real estate school unless the school, institution, or person is licensed or approved by the department.

(3) A person, school, or institution that violates subsection (1) or (2) is guilty of a misdemeanor, punishable by a fine of not more than \$500.00, or imprisonment for not more than 90 days, or both.

(4) A person, school, or institution that violates subsection (1) or (2) a second or any subsequent time is guilty of a misdemeanor, punishable, except as provided in section 735, by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both.

(5) Notwithstanding the existence and pursuit of any other remedy, an affected person may maintain injunctive action to restrain or prevent a person from violating subsection (1) or (2). If successful in obtaining injunctive relief, the affected person shall be entitled to actual costs and attorney fees.

(6) This act does not apply to a person engaging in or practicing the following:

(a) Interior design.

(b) Building design.

(c) Any activity for which the person is licensed under the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569.

(d) Any activity for which the person is licensed under the Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to 338.988.

(e) Any activity for which the person is licensed under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892.

(7) As used in subsection (5), "affected person" means a person directly affected by the actions of a person suspected of violating subsection (1) or (2) and includes, but is not limited to, a licensee or registrant, a board established pursuant to this act, a person who has utilized the services of the person engaging in or attempting to engage in an occupation regulated under this act or using a title designated by this act without being licensed or registered by the department, or a private association composed primarily of members of the occupation in which the person is engaging in or attempting to engage in or in which the person is using a title designated under this act without being registered or licensed by the department.

(8) An investigation may be conducted under article 5 to enforce this section. A person who violates this section shall be subject to this section and section 506.

(9) The remedies under this section are independent and cumulative. The use of 1 remedy by a person shall not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person.

(10) An interior designer may perform services in connection with the design of interior spaces including preparation of documents relative to finishes, systems furniture, furnishings, fixtures, equipment, and interior partitions that do not affect the building mechanical, structural, electrical, or fire safety systems.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1994, Act 400, Imd. Eff. Dec. 29, 1994;—Am. 1998, Act 250, Eff. Oct. 1, 1998;—Am. 2005, Act 278, Imd. Eff. Dec. 19, 2005.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at § 338.3501 of the Michigan Compiled Laws.

Popular name: Act 299

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339.601a Advisory subcommittee on interior design; membership; purpose; list of qualified individuals; rules; stamp; “interior designer” defined.

Sec. 601a. (1) There is created in the department an advisory subcommittee on interior design to consist of not more than 5 individuals selected by the department. Of the 5 individuals, 2 shall be licensed architects and the remaining members shall be interior designers chosen from a list of interior designers submitted to the department by nationally recognized associations of interior designers. The department shall assure that the advisory subcommittee on interior design is fully functional not later than 6 months after the effective date of the amendatory act that added this section and shall cease to exist after it has reviewed the last application made under subsection (4)(c). The purpose of the advisory subcommittee on interior design is to verify, by majority vote of its members, the qualifications of interior designers who have not passed an examination as further described in subsection (4)(c) but who seek qualification for the performance of services described in section 601(10) on the basis of education and experience and to recommend the qualifications of those interior designers to perform the services described in section 601(10). The advisory subcommittee on interior design shall also compile a list of all individuals considered qualified to perform the services described in section 601(10). The advisory subcommittee on interior design shall give the list to the board of architects for review and consideration of those persons determined to have met the standards described in subsection (4). The approval of individuals considered qualified shall occur not less than 90 days after the list is submitted to the board of architects. A person whose qualifications are not approved by the board of architects may appeal that determination to the director or his or her designee. The department shall make the list of persons determined to have met the standards described in subsection (4) electronically available to the state or any local unit of government capable of issuing permits under the state construction code act of 1972, 1972 PA 230, MCL 125.1501 to 125.1531.

(2) The director may promulgate rules to administer this section. The rules may include, but are not limited to, reasonable fees charged to individuals seeking qualification for performing services under section 601(10) and procedures for adding and removing individuals from the list of qualified interior designers.

(3) An interior designer shall have a rectangular nonembossed stamp with the interior designer's name, business address, title “interior designer”, and certificate number issued by the national council for interior design qualification, if applicable. Use of the stamp shall be accompanied by the original signature of the interior designer.

(4) As used in this section and section 601, “interior designer” means an individual engaged in the activities described in section 601(10) who meets 1 or more of the following:

(a) Beginning on the effective date of the amendatory act that added this subsection, has proof of passing the complete 1997 examination or other examination adopted by reference by the department and offered by the national council for interior design qualification. For purposes of this subsection, that examination and the qualifications to sit for that examination are adopted by reference and any subsequent update or revision of that examination or the qualifications to sit for that examination may, by rule promulgated by the director, be adopted by reference by the department.

(b) Was engaged, before the effective date of the amendatory act that added this subsection, in the activities described in section 601(10) and has proof of passing any complete examination offered by the national council for interior design qualification. Passage of any past examination offered by the national council for interior design qualification is adequate to qualify an interior designer for the exemption described in section 601(10).

(c) Until the expiration of 1 year after the date of the establishment of the advisory subcommittee on interior design, demonstrates to the advisory subcommittee on interior design that he or she was engaged in the activities described in section 601(10) and meets the qualifications of education and experience that would confer eligibility for sitting for the 1997 or other examination offered by the national council for interior design qualification.

History: Add. 1998, Act 250, Eff. Oct. 1, 1998.

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Administrative rules: R 339.601 of the Michigan Administrative Code.

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339.602 Violation of act, rule, or order; penalties.

Sec. 602. A person, school, or institution that violates this act or a rule or order promulgated or issued under this act shall be assessed 1 or more of the following penalties:

(a) Placement of a limitation on a license or certificate of registration for an occupation regulated under

articles 8 to 25.

- (b) Suspension of a license or certificate of registration.
- (c) Denial of a license, certificate of registration, or renewal of a license or certificate of registration.
- (d) Revocation of a license or certificate of registration.
- (e) An administrative fine to be paid to the department, not to exceed \$10,000.00.
- (f) Censure.
- (g) Probation.
- (h) A requirement that restitution be made.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1981, Act 83, Imd. Eff. July 1, 1981;—Am. 2005, Act 278, Imd. Eff. Dec. 19, 2005.

Popular name: Act 299

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339.603 Restitution; suspension of license or certificate of registration.

Sec. 603. If restitution is required to be made under section 602, the license or certificate of registration of the person required to make the restitution may be suspended until the restitution is made.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

Popular name: Act 299

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339.604 Violation of article regulating occupation or commission of prohibited act; penalties.

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or more of the following shall be subject to the penalties prescribed in section 602:

- (a) Practices fraud or deceit in obtaining a license or registration.
- (b) Practices fraud, deceit, or dishonesty in practicing an occupation.
- (c) Violates a rule of conduct of an occupation.
- (d) Demonstrates a lack of good moral character.
- (e) Commits an act of gross negligence in practicing an occupation.
- (f) Practices false advertising.
- (g) Commits an act which demonstrates incompetence.
- (h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.
- (i) Fails to comply with a subpoena issued under this act.
- (j) Fails to respond to a citation as required by section 555.
- (k) Violates or fails to comply with a final order issued by a board, including a stipulation, settlement agreement, or a citation.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980;—Am. 1981, Act 83, Imd. Eff. July 1, 1981;—Am. 1989, Act 261, Eff. Jan. 1, 1990.

Popular name: Act 299

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339.605 Action in name of state; intervention and prosecution by attorney general.

Sec. 605. The department may bring any appropriate action in the name of the people of this state to carry out this act and to enforce this act. If the attorney general considers it necessary, the attorney general shall intervene in and prosecute all cases arising under this act.

History: 1980, Act 299, Imd. Eff. Oct. 21, 1980.

Popular name: Act 299